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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Case No.: 3:23-cv-04984-JSC

Plaintiff,

**[PROPOSED] SECOND STIPULATED
ORDER RE: DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION FOR STANDARD
LITIGATION**

VS.

TESLA, INC.

Defendant.

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23 *Attorneys for Defendant TESLA, INC.*

1 Pursuant to Pretrial Order No. 2, (ECF 65), Plaintiff U.S. Equal Employment Opportunity
2 Commission (EEOC) and Defendant Tesla, Inc. (Tesla), (collectively, the parties), hereby submit the
3 following Second Stipulated Order and Proposed Protocol Regarding Electronically Stored
4 Information.

5 **I. PURPOSE**

6 This Order will govern discovery of electronically stored information (ESI) in this case as a
7 supplement to the Federal Rules of Civil Procedure, this Court's Guidelines for the Discovery of
8 Electronically Stored Information, The First Stipulated Order Re: Discovery of Electronically Stored
9 Information for Standard Litigation (ECF 55), and any other applicable orders and rules.

10 **II. COOPERATION**

11 The parties are aware of the importance the Court places on cooperation and commit to
12 cooperate in good faith throughout the matter consistent with this Court's Guidelines for the
13 Discovery of ESI.

14 **III. LIAISON**

15 The parties have identified liaisons to each other who are and will be knowledgeable about
16 and responsible for discussing their respective ESI. Each e-discovery liaison will be or will have
17 access to those who are knowledgeable about the technical aspects of e-discovery, including the
18 location, nature, accessibility, format, collection, search methodologies, and production of ESI in
19 this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve
20 disputes without court intervention.

21 **IV. PRESERVATION**

22 The parties have discussed their preservation obligations and needs and agree that
23 preservation of potentially relevant ESI will be reasonable and proportionate. Although this Protocol
24 envisions the use of electronic search methodologies, *see infra*, to search for and collect potentially
25 responsive documents, where a party knows or reasonably should know that information is relevant
26 and responsive to a document request, it shall not withhold that document from production on the
27 basis that its electronic search methodology did not otherwise identify the document. Unless
28 specifically stated, nothing in this stipulation is intended to abrogate or alter the parties' obligations

1 with respect to preserving ESI.

2 1. **Relevant ESI Sources.** The parties have identified in Exhibit A (Relevant ESI
3 Sources) some of the Email, User-Created Files, and Database Systems that they reasonably believe
4 to contain relevant information during the Temporal Scope of Preservation (*see* below). To the
5 extent that the parties identify additional systems for preservation and potential production, or if
6 upon further investigation, revision to the existing system descriptions is necessary, the parties agree
7 to identify the additional systems and/or revise existing system descriptions.

8 2. **Preservation of ESI.** The parties shall take reasonable steps to preserve relevant ESI
9 that is within their possession, custody, or control.

10 3. **Custodians.** The parties have identified in Attachment 2 some of the types of ESI
11 they believe should be preserved and Attachment 3 some of the general job titles or descriptions of
12 custodians, for whom they believe ESI should be preserved, e.g., “HR head,” “scientist,” and
13 “marketing manager.” The parties shall add or remove sources and custodians as reasonably
14 necessary. In responding to discovery requests, the producing party shall also identify the specific
15 custodial accounts and ESI sourced searched.

16 4. **Reasonably Inaccessible Data.** If a party declines to collect or search a source that it
17 reasonably believes to be sources of unique, potentially responsive ESI on the bases that the
18 materials are not reasonably accessible, that party must notify the other party and meet and confer in
19 an effort to resolve any disagreements before seeking relief from the Court.

20 **V. SEARCH**

21 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if
22 appropriate, they will meet and confer as needed about methods to search ESI to identify ESI that is
23 subject to production in discovery and filter out ESI that is not subject to discovery.

24 A. **The Use of Search Terms on Unstructured Data.** If the producing party determines
25 the use of search terms is appropriate to search and collect relevant and/or responsive ESI, the
26 parties shall collaborate and cooperate in good faith to seek to reach an agreement on search terms to
27 be used.

28 The producing party shall develop and share with the requesting party a list of proposed

1 search terms, including (1) overall number of documents in the document collection against which
2 the search was conducted; (2) the “hit count” of the raw number of documents identified per search
3 term; (3) the total number of unique documents with hits across all search terms and documents
4 within families containing such unique documents (i.e., the review universe if all terms were to be
5 accepted and reviewed). For any complex Boolean search strings, the report will provide information
6 both for the search string as a whole as well as each individual component of the Boolean search
7 string to help counsel analyze the effectiveness of search terms.

8 At the same time, if the producing party is using a tool other than Relativity, the producing
9 party shall also provide information to the requesting party regarding the syntax and search
10 capabilities and limitations of its ESI tool with respect to search terms (e.g., ordering of search terms
11 and parentheses, what wildcard options are available, stemming capabilities, noise words, Boolean
12 capabilities, etc.) sufficient for the requesting party to understand the search terms proposed and to
13 offer counterproposals to them. The producing party shall provide, concurrently with the Report,
14 sufficient information for the requesting party to propose refined search terms, such as identifying
15 any groups of nonrelevant emails upon which the search terms are hitting. The parties agree that the
16 process will collaborative and iterative.

17 1. The requesting party shall provide any revisions or additions to the producing party’s
18 proposed search terms (counterproposals), if any, within a reasonable time after receipt of proposed
19 search terms from the producing party.

20 2. After receipt of the first set of revisions or additions from the requesting party (as set
21 forth above), the producing party will identify which of the requesting party’s proposed search terms
22 the producing party agrees to use, and which terms it rejects, and shall propose alternatives, if any, to
23 counterproposals to which it objects. The producing party shall at the same time supply a Search
24 Terms Hit Report (STH Report), as described in subsection (4) below, for all search terms that were
25 accepted, rejected, and all proposed alternatives. Upon request, the producing party shall confer with
26 the requesting party concerning the producing party’s reasoning behind why particular search terms
27 are not acceptable and possible alternative search terms.

28 3. The parties shall reasonably repeat the process in subsection (1) and (2) in good faith

1 to come to a final agreement regarding search terms. The parties will meet and confer regarding
 2 disputed search terms and STH Reports as needed. The parties shall meet and confer to attempt to
 3 develop a mutually agreeable means of evaluating the effectiveness of disputed search terms in
 4 identifying responsive documents, such as a responsiveness review of a statistically significant
 5 random sample of the documents hit by a disputed term.

6 **4. STH Report:** STH Reports will be provided in Excel (or other format as agreed to by
 7 the parties). An STH Report should: (a) exclude from the number of hits any duplicates; (b) provide
 8 the number of documents hit by the search term, including family members; and (c) the number of
 9 unique documents hit by each search term (i.e., the number of documents hit by that search string
 10 and no others, and not previously produced in this litigation).

11 **5. Validation:** Once the parties have agreed to a list of search terms subject to the
 12 process outlined above, the parties shall meet and confer to attempt to develop a mutually agreed
 13 methodology to determine effectiveness of search terms in identifying responsive documents. The
 14 parties shall meet and confer regarding whether further modification to the final set of search terms
 15 is necessary.

16 **6.** The mere fact that a document is hit or captured by the application of any agreed
 17 upon search terms does not mean that such document is necessarily responsive to any propounded
 18 discovery request or is otherwise relevant to this litigation.

19 **7.** If after finalization of search terms or other parameters a party determines in good
 20 faith that additional search terms or parameters are necessary to identify responsive information or
 21 determines that modifications to search terms or other parameters are necessary to avoid
 22 disproportionate or undue burden and expense associated with the review and production of the
 23 results of those search terms, counsel will meet and confer in an effort to agree on additional or
 24 modified terms after an initial production.

B. Structured Database Systems

25 The default form for production of database information is “fielded tables” where each row
 26 represents a database record and each column represents a single data field, such as a Microsoft
 27 Excel spreadsheet or delimited text file. The producing party will provide a description of the fields
 28

1 contained in their structured databases, including any codes used. Upon review of the report, the
 2 requesting party may make reasonable requests for additional information to explain the database
 3 schema, codes, abbreviations, and different report formats or to request specific data from identified
 4 fields.

5 **C. Custodial Mobile Device and Social Media Data**

6 For custodians identified in Attachment 3 and employed by either party, or ordered by the
 7 Court, a producing party will take reasonable steps to identify whether any unique, responsive,
 8 discoverable communications are located on any mobile device or social media accounts in the
 9 “possession, custody, or control” (as defined under the Federal Rules and case law) of the producing
 10 party. The producing party is obligated to disclose if it takes the position that a custodian possesses a
 11 mobile device or social media account that was used for work purposes and is not within the
 12 producing party’s possession, custody or control. The producing party shall provide an explanation
 13 and support for its position that a mobile device is not within the producing party’s possession,
 14 custody, or control.

15 Information produced from mobile devices and social media may be produced as screenshots
 16 in the first instance, provided that requesting parties reserve the right to then request native
 17 productions of such data and/or forensic examinations if they doubt the authenticity of any such
 18 evidence or for other good cause. The parties agree to meet and confer in such instances.

19 **VI. PROCESSING, FILTERING AND REVIEW**

20 The processing and review of Unstructured ESI may consist of any of the following
 21 processes selected by the producing party: (1) loading of ESI into a review platform; (2) the
 22 application of file type, date, and other metadata filters; (3) the use of search terms, as outlined *infra*
 23 in Section VI(A); (4) the use of analytics technologies, including deduplication, email threading,
 24 clustering, filtering, categorization, and technology assisted review/ predictive coding and Gen AI
 25 technology, as outlined *infra* in Sections VI(C)-(E); and (5) attorney review for responsiveness.

26 Parties will review the results of the above efforts for privilege or other protection from
 27 disclosure and all responsive, relevant, non-privileged ESI shall be produced in the format described
 28 below in Section VII.

1 **A. The Use of Search Terms on Unstructured ESI to Filter and Review**

2 If the producing party finds it appropriate to apply search terms to cull the collected ESI
 3 before review, the parties shall follow the process outlined in Section V(A), *supra*.

4 **B. Email Domain Exclusions**

5 Producing parties may utilize an ESI search process to identify categories of documents,
 6 such as emails from domains typically associated with junk email, such as retailer advertising, and
 7 newsletters or alerts from non-industry sources. Absent compelling circumstances and any message,
 8 attachment or other electronically stored information that has been identified by a spam or virus
 9 filter shall be treated as per se non-responsive and a party shall not be required to preserve, review,
 10 or produce such ESI.

11 **C. Technology Assisted Review/Predictive Coding.**

12 The parties also recognize the availability of a variety of search tools and methodologies,
 13 including but not limited to Technology Assisted Review (TAR) and Gen AI tools. Tesla has
 14 notified plaintiff's counsel that it may use TAR and/or GEN AI tools to further analyze documents
 15 for relevance after search terms are used to narrow the starting document universe to exclude
 16 documents not likely to be relevant. If the producing party intends to use TAR, GEN AI, or similar
 17 advanced analytics as a substitute for attorney responsiveness review, the parties agree to meet and
 18 confer in good faith to attempt to reach agreement about the technology and process that a producing
 19 party proposes to use to identify responsive ESI and a statistically sound methodology to determine
 20 the recall rate and other measures of the effectiveness of the tool and processes in identifying
 21 responsive documents. The producing party shall make disclosures regarding its tools and processes
 22 necessary to make the meet and confers meaningful and for the requesting party to negotiate on an
 23 informed basis.

24 If, prior to commencement of negotiations over search terms, a producing party intends, or is
 25 likely, to use both search terms and TAR (or similar advanced analytics), it shall notify the
 26 requesting party prior to commencement of search term negotiations. If a producing party decides to
 27 employ TAR or similar advanced analytics during, or after the conclusion of, negotiations over
 28 search terms, it shall promptly notify the requesting party before commencing any review.

1 **D. Email Threading**

2 The parties may utilize email threading technology in their review to thread email messages
3 where the content of those messages, and any attachments, are wholly contained within a later email
4 message in the thread (Inclusive Emails).

5 **VII. PRODUCTION FORMATS**

6 The parties agree to the format for production as described herein as well as Exhibit A.

7 **A. Paper Documents**

8 Hard copy documents shall be scanned to single-page TIFF Group IV format (300 DPI
9 resolution) with corresponding searchable OCR text and be logically unitized. The file name for the
10 TIFF image shall be the Bates/PageID Number. Scanned documents shall also be converted into
11 searchable text using optical character recognition (OCR), extracted, and saved as a text file named
12 with the Bates/PageID Number. The OCR shall include the Bates/PageID number for each page. The
13 load file shall include a field for the OCR/Text file path.

14 **B. Email and User-Created Files**

15 The parties will produce documents in accordance with the specifications identified in this
16 section. ESI will generally be produced in single-page TIFF format (300 DPI resolution) with
17 corresponding document-level extracted text and a delimited DAT file containing the metadata fields
18 outlined in Exhibit A.

19 8. All spreadsheet and presentation files (e.g., Excel, PowerPoint) shall be produced in
20 native format with an associated placeholder image, and a native file path contained in the DAT file
21 to the native file.

22 9. All hidden text (e.g., track changes, hidden columns, mark-ups, notes) shall be
23 expanded and rendered in the image file.

24 10. All embedded objects (Word documents, Excel spreadsheets, .wav files, etc.) that are
25 found within a file—excluding automatically generated signature graphics and logos to the extent
26 they can be isolated and excluded—shall be extracted and produced. For purposes of production, the
27 embedded files shall be treated as attachments to the original file, with the parent/child relationship
28 preserved.

1 11. The parties agree to take reasonable steps based on industry standards to open
 2 password-protected or encrypted files, including using commercially accessible software as well as
 3 requesting passwords from those individuals which the Parties represent. If there are likely
 4 responsive encrypted or password protected documents, which the producing party has been unable
 5 to, after reasonable efforts, to locate the password or decrypt, the parties shall meet and confer. If a
 6 party believes that removing password protection is unduly burdensome, the parties shall meet and
 7 confer.

8 12. The producing party shall disclose any substantive gaps, errors, or exceptions in the
 9 collected or processed ESI.

10 **C. Family Relationships and Modern Attachments**

11 Parent-child relationships (association between an attachment and its parent document) shall
 12 be preserved. The attachment(s) shall be produced adjacent to the parent document, in terms of Bates
 13 numbers, with the first attachment being named with the next sequential number after the parent, and
 14 any additional attachment(s) sequentially numbered after that first attachment. The Parties agree that
 15 if any part of a Document or its attachments is responsive, the entire Document and its attachments
 16 will be produced as responsive, except any attachments withheld and logged based on privilege.
 17 Withheld documents should be replaced with slip sheets. The parties agree to meet and confer if
 18 either party proposes to redact any documents on any basis other than privilege.

19 The producing party shall use available Microsoft O365 tools to produce hyperlinked
 20 documents and “Modern attachments” contained within emails or other Unstructured Data in a
 21 reasonably usable form that will identify the connection between the “parent” message (the
 22 originating message containing the modern attachment) and the modern attachment, to the extent the
 23 producing party’s internal systems reasonably allow for automated collection and identification of
 24 such Modern attachments. The producing party shall meet and confer with the requesting party to
 25 discuss proposed formats of production for modern attachments. To the extent that a unique modern
 26 attachments points to a drive, folder, or other ESI that is not an individual file, parties shall meet and
 27 confer to discuss production.

1 **D. Short Messages**

2 Short Messages, including text, Microsoft Teams, WhatsApp, and Slack messages, if any,
 3 shall be produced in a searchable format that reasonably preserves presentational features of the
 4 original messages, such as emojis, images, video files, animations, and the like. In general, Short
 5 Messages should be produced in the same format as that in which they were exported for purposes of
 6 collection, search, or review.

7 **E. Custodial Mobile Device Data**

8 Prior to any production of responsive data from mobile devices of custodians, e.g., party
 9 employees, the producing party shall discuss the potential export formats and the method and tool
 10 used for extraction.

11 **F. Redacted Documents**

12 Documents that contain redactions, including any associated family members, will be
 13 produced in single-page TIFF format (300 DPI resolution) with corresponding document-level
 14 extracted text and a delimited DAT file containing the metadata fields outlined in Exhibit A to the
 15 extent that such metadata fields are not part of the redaction. Documents produced with redactions
 16 shall identify in some manner (such as through highlighting in black or through the use of redaction
 17 boxes) the location and extent of redacted information. To the extent a party deems production of
 18 redacted TIFF images of Excel spreadsheets significantly degrades the usability of the document, the
 19 parties agree to meet and confer regarding alternate production methodologies of the redacted
 20 information.

21 **VIII. PHASING**

22 The parties will meet and confer as may be necessary regarding additional phasing discovery.

23 **IX. DOCUMENTS PROTECTED FROM DISCOVERY**

24 **A. The following categories of documents need not be included on a privilege log:**

25 1. Attorney-client privilege:

- 26 a. Communications only between or amongst Tesla's in-house and outside counsel
 27 that post-date the filing of the Commissioner's Charge;

- 1 b. Communications only between or amongst EEOC Enforcement Unit and Legal
- 2 Unit that post-date the filing of the Commissioner's Charge.
- 3 c. Communications between EEOC Legal Unit and potentially aggrieved individuals
- 4 that post-date the Letter of Determination, unless the EEOC may rely on such
- 5 communications to support its claims.
- 6 2. Attorney work product:
 - 7 a. Documents created by Tesla's in-house or outside counsels that post-date the
 - 8 filing of the Commissioner's Charge, unless Tesla may rely on such documents to
 - 9 support its defenses; and,
 - 10 b. Documents created by EEOC legal unit or enforcement unit personnel that post-
 - 11 date the filing of the Commissioner's Charge; unless EEOC may rely on such
 - 12 documents to support its claims.

13 **B. Privilege Logs**

14 The parties agree that any privilege logs required to be produced in accordance with Section
 15 F of the Court's Civil Standing Orders shall be due within 45 days after the underlying discovery
 16 responses are due, absent stipulation or Court order. The log shall be produced in an electronic and
 17 easily searchable and manipulable format (such as a CSV file).

18 **X. MODIFICATION**

19 This Stipulated Order may also be modified by another Stipulated Order of the parties or by
 20 the Court. If the parties are unable to agree, need further clarification on any issue relating to the
 21 preservation, collection, or production of electronically stored information, or seek modification of
 22 this Order, the parties agree to promptly pursue informal discovery dispute resolution procedures in
 23 accordance with Section F of the Court's Civil Standing Orders. Entering into this Stipulated Order
 24 does not prejudice the parties' rights to seek modification(s) of this Stipulated Order or additional
 25 ESI related orders.

26 **IT IS SO STIPULATED**, through Counsel of Record.

27 Dated: February 7, 2025

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19 *Attorneys for Defendant Tesla Inc.*

20 **IT IS SO ORDERED** that the forgoing Stipulation is approved.

21 Dated: February 7, 2025

22 
23 HON. JACQUELIN S. CORLEY
24 UNITED STATES DISTRICT JUDGE

1
2 **LOCAL RULE 5-1(i)(3) ATTESTATION**

3 I, James H. Baker, am the ECF User whose ID and password are being used to file the ESI
4 Protocol. In compliance with Local Rule 5-1(i)(3), I hereby attest that Tyree Jones concurs in this
filing.

5
6 Dated: February 7, 2025 /s/ James H. Baker
7 James H. Baker, Senior Trial Attorney

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II. Relevant ESI Sources for Defendant:

A. Unstructured Data

1. **Email:** Tesla's email is maintained on Microsoft Office Outlook system.
2. **Teams:** Teams messages are maintained on Tesla's Microsoft Office System. However, Microsoft Teams was launched at Tesla in 2018. Email and Teams messages are maintained in the same .pst file for each user.
3. **User-Created Files:** User files were occasionally maintained on a network server and are sometimes uploaded and shared via OneDrive.
4. **Devices:** Some Tesla employees are issued laptops and cellular phones. However, Production Associates are generally not issued laptops or cellular phones. Eligible employees can elect to use their personal cellphone or be subject to an approval process to have one issued by Tesla.

B. Structured Database Systems

1. Potentially relevant employee information is currently maintained in MySQL database. Employment documents are in an internal storage called DMS. Both are data sources for the Inside Tesla application.
2. Internal complaints or issues raised by employees are maintained in Convergent [since mid-2017] and, more recently, CaseIQ [since mid-2023].

Attachment 2

RELEVANT ESI CUSTODIANS

I. Relevant Custodians for Defendant:

1. Human Resources and Employee Relations Personnel of Potential Aggrieved Individuals at the Fremont Factory.
2. Supervisors of Potential Aggrieved Individuals at the Fremont Factory.
3. Any specific Tesla employee who is alleged by the EEOC to have participated in any improper or illegal acts. Tesla hereby requests that the EEOC identify any or all such individuals as soon as practicable.
4. Decision-makers regarding the discipline and/or termination of any Potential Aggrieved Individuals at the Fremont Factory.
5. Decision-makers regarding the implementation of EEO policies, practices, and procedures at the Fremont Factory.

II. Relevant Custodians for EEOC

1. EEOC Investigative Personnel
2. Unrepresented PAIs whom the EEOC will rely upon as witnesses or declarants in their case against Tesla.